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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,463	10/24/2003	Patricia Ruzakowski Athey	1320D2	2526

7590 02/25/2008
PPG INDUSTRIES, INC.
Intellectual Property Department
One PPG Place
Pittsburgh, PA 15272

EXAMINER

BLACKWELL, GWENDOLYN ANNETTE

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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02/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/693,463

Applicant(s)

ATHEY ET AL.

Examiner

Gwendolyn Blackwell

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 7, 2007 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent no. 5,693,134, Stephens.

Regarding claims 1 and 3

Stephens discloses a pigment comprised of a substrate with a coating of $\text{Cu}_x\text{Mn}_{3-x}\text{O}_4$ (x-1.4 or 1.5), (column 8, lines 20-24, claim 1). The substrate can be made of glass, (column 8, lines 35-37, claim 6). Stephens does not specifically disclose that the coating has a blue color in transmission once placed on a glass substrate or the size of the glass substrate.

Because Stephens disclose a substrate of glass with a coating of $\text{Cu}_x\text{Mn}_{3-x}\text{O}_4$ ($x=1.4$ or 1.5), (column 8, lines 20-24, 35-37, claim 1, claim 6), which overlaps the range as set forth by Applicant, it would be expected that the glass substrate would have a blue light in transmission.

Furthermore, the platelet substrate that the coating is place of over is glass. It would have been “ Obvious to try ” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success as the only difference between the claimed invention and the prior art is the size of the glass substrate. Absent a showing of criticality of the size of the glass substrate, (a result effective variable), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the size of the glass through routine experimentation in order to achieve coated glass article having the desired color transmittance that suits the size and shape of the desired end product. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

4. Applicant's arguments filed December 7, 2007 have been fully considered but they are not persuasive.
5. Applicant contends that the prior art does not teach or suggest the article of amended claim 1 comprising a flat glass sheet or a glass ribbon having the claimed coating.
6. With regards to Applicant's contention, Stephens specifically discloses coating a substrate with a coating of $\text{Cu}_x\text{Mn}_{3-x}\text{O}_4$ ($x=1.4$ or 1.5), which can have a blue color in transmission, (column 6, lines 32-37 and Table 1). Stephens also specifically discloses that the

coating can be used on a glass substrate as demonstrated in claim 6, (column 8, lines 35-37). Because the coating composition meets all of the requirements of Applicant's coating composition and the coating is formed on a glass substrate, as also required by Applicant, it would be expected that the pigment of Stephens would exhibit a blue color in transmission absent an objective showing to the contrary.

In addition, Applicant claims a coated article. It is the position of the Examiner that the prior art teaches a glass substrate with a coating thereon that meets the compositional limitations of the presently claimed invention. The fact that Applicant's claims are drawn to a coated article is simply not enough to define the subject matter over the prior art of record. The comparison is not between the claimed coated article and a paint containing the prior art pigment, but to the coated article and the pigment, more specifically the structure of the pigment (a coating on a glass substrate), its ultimate intended use notwithstanding. There is no evidence of record to indicate that using the coating of the prior art on a larger substrate would not provide the same blue color in transmission. Absent a showing to the contrary, the rejection stands.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Blackwell whose telephone number is (571) 272-1533. The examiner can normally be reached on Monday - Thursday; 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gwendolyn Blackwell/
Primary Examiner, Art Unit 1794